



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 46
AGENDA DATE: Thu 02/03/2005
PAGE: 1 of 3

SUBJECT: Conduct a public hearing to consider a request for a variance from the Land Development Code to allow the expansion and remodeling of an existing structure located at 708 East 6th Street and to waive the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain of Waller Creek.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Watershed Protection and **DIRECTOR'S**
DEPARTMENT: Development Review **AUTHORIZATION:** Joe Pantalion

FOR MORE INFORMATION CONTACT: Ray Windsor, 974-3362; Gary Kosut, P.E., 974-3374; Martha Vincent, 974-3371

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

The owner of the structure at 708 East 6th Street, Mr. Ron Flores, through his agent, Ms. Sarah Crocker, proposes to expand the existing, nonconforming structure from 1380 square feet to 4096 square feet for use as a restaurant. The existing structure is entirely within the 25-year and 100-year floodplains of Waller Creek.

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
RECOMMENDS DENIAL OF THIS VARIANCE REQUEST.**

The Land Development Code 25-12-3, Section 5903, states that a structure that does not conform with the floodplain regulations shall not be expanded, changed, enlarged, or altered in a way which increases its nonconformity. Additionally, no substantial improvement of the structure shall be made unless the structure is changed to conform to the floodplain regulations.

APPLICABLE CODE:

LDC Section 25-12-3, Local amendments to the Building Code, Section 5903. Nonconforming Uses. A structure, or the use of a structure or premises, which was lawful before the adoption this chapter, but which does not conform with the requirements of these regulations, may be continued subject to the following conditions:

- (1) No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.



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- (2) No substantial improvement of the structure shall be made unless the structure is changed to conform with these regulations.

LDC 25-7-152 Dedication of Easements and Rights-of-Way.

- (A) The owner of real property proposed to be developed shall dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

DISCUSSION OF THIS VARIANCE REQUEST WITH RESPECT TO PREREQUISITES FOR GRANTING VARIANCES:

The City Building Code Appendix Chapter 58, Article 8 specifies that variances shall only be issued upon: meeting the following prerequisites:

1. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Finding: Relief is defined as relief from exceptional hardship. In this case, there is no exceptional hardship. The owner currently has use of his property, in compliance with code, to operate a commercial enterprise within the existing building structure.

2. Showing a good and sufficient cause;

Finding: There is not cause to allow the owner a variance from code that other property owners have been required to comply with.

3. A determination that failure to grant the variance would result in exceptional hardship to the applicant,

Finding: The owner currently has economic use of the property. "Exceptional hardship" is defined as a characteristic of the land. It does not refer to personal or financial circumstances of the current owner of the land.

4. A determination that granting a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.

Finding: The proposed development does not increase floodplain water surface elevations. However, public safety risk is increased because the structure is surrounded by up to 4.9 feet of water at the rear and 2.8 feet of water at the front for the 25-year storm event. Additionally, Waller Creek rate of rise is short because of the highly developed nature of the watershed. The proposed building addition would add 3041 square feet of interior space and 1055 square feet of open terrace or outdoor seating area. The existing structure is 2750 square feet if the "basement" is included; 1425 square feet without the basement. The proposed increase in interior space offers significant opportunity for occupancy increase and increased vulnerability to property damage.

VARIANCE PROCEDURES:



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The City Council shall hear and render judgment on requests for variances from the flood plain management regulations. Variances shall not be issued within any designated floodway (25-year floodplain) if any increase in flood levels during the base flood (100-year flood) discharge would result. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing relevant factors have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases. The relevant factors to be considered are:

- 1) The danger to life and property due to flooding or erosion damage;
- 2) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- 3) The danger that materials may be swept onto other lands to the injury of others;
- 4) The compatibility of the proposed use with existing and anticipated development;
- 5) The safety of access to the property during times of flood for ordinary and emergency vehicles;
- 6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- 7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;
- 8) The necessity to the facility of a waterfront location, where applicable;
- 9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 10) The relationship of the proposed use to the comprehensive plan for the area.

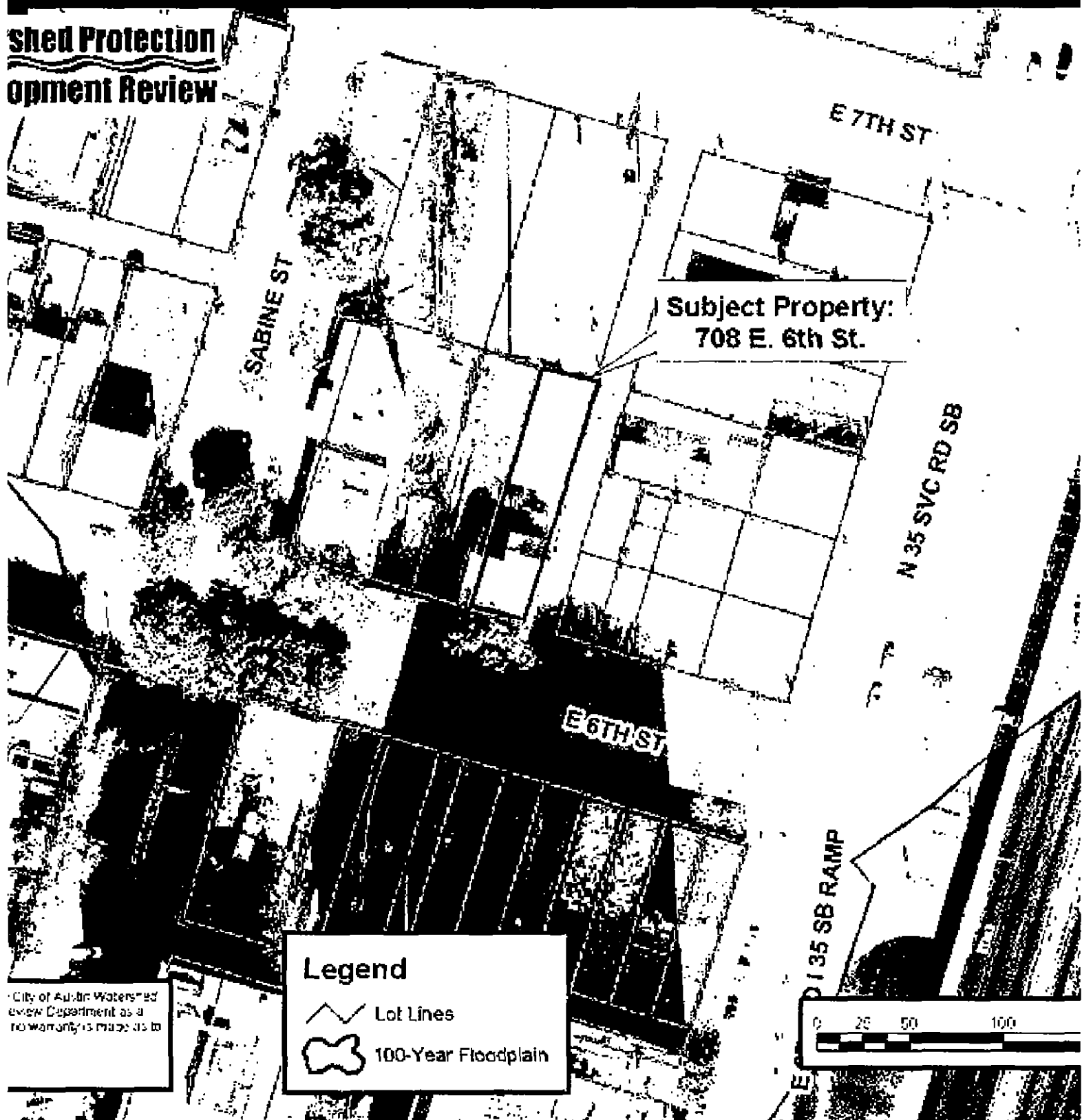
Backup Information Packet

Conduct a public hearing to consider a variance request to allow expansion and remodeling of an existing structure at 708 East 6th Street in the 25-year and 100-year floodplains and to waive the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain of Waller Creek.

(Suggested date and time: February 3, 2005, at 6:00 p.m.)

- Site Location Map for 708 East 6th Street.
- Floodplain Variance Procedures.
- Photograph of the existing building at 708 East 6th Street.
- Photograph of the existing building at 708 East 6th Street.
- Photograph of the existing building at 708 East 6th Street.

Flood Protection Development Review



2. FLOODPLAIN VARIANCE PROCEDURES

Building Code, Appendix Chapter 58, Article 8 outlines procedures for consideration of flood plain development and evaluation of variance requests.

PREREQUISITES FOR GRANTING VARIANCES:

Variances shall only be issued upon:

- 1) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 2) Showing a good and sufficient cause;
- 3) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
- 4) A determination that granting a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.

VARIANCE PROCEDURES:

The City Council shall hear and render judgement on requests for variances from the flood plain management regulations. Variances shall not be issued within any designated floodway (25-year floodplain) if any increase in flood levels during the base flood (100-year flood) discharge would result. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing relevant factors have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases. The relevant factors to be considered are:

- 1) The danger to life and property due to flooding or erosion damage;
- 2) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- 3) The danger that materials may be swept onto other lands to the injury of others;
- 4) The compatibility of the proposed use with existing and anticipated development;
- 5) The safety of access to the property during times of flood for ordinary and emergency vehicles;
- 6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- 7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;
- 8) The necessity to the facility of a waterfront location, where applicable;
- 9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 10) The relationship of the proposed use to the comprehensive plan for the area.

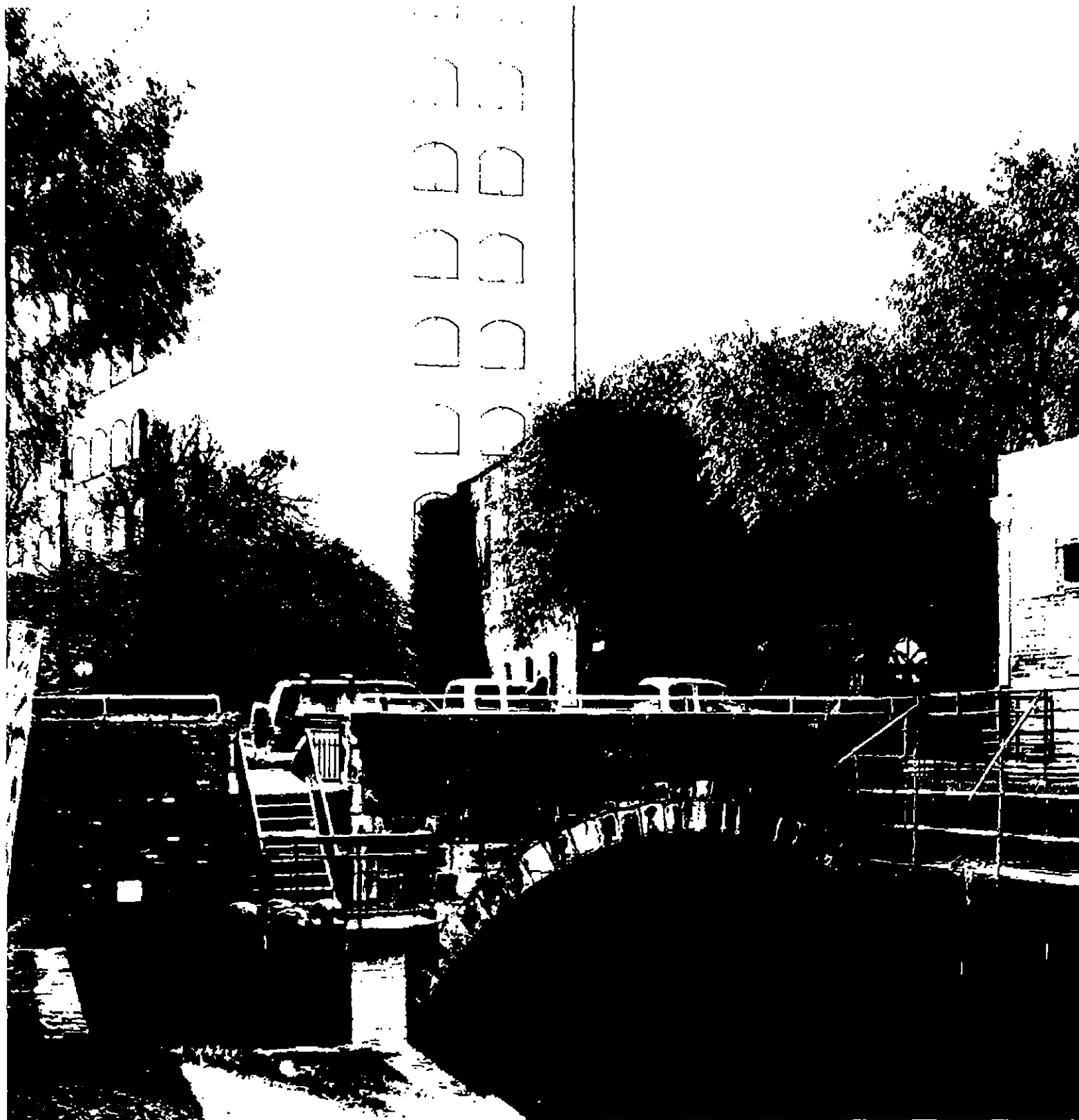
Photograph of the existing building at
708 East 6th Street



Photograph of the existing building at
708 East 6th Street



Photograph of the existing building at 708 East 6th Street



ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 708 EAST 6TH STREET FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR EXPANSION AND REMODELLING OF AN EXISTING STRUCTURE IN THE 25 AND 100-YEAR FLOODPLAIN, AND PROVIDING AN EXPIRATION FOR THE VARIANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Council has considered the factors for granting a variance from floodplain regulations prescribed by Section 25-12-3 (*Local Amendments to the Building Code*), Appendix Chapter 58, Article 8, Subsection D (*Variance Procedures*) of the City Code. Council finds that the variance granted by this ordinance is the minimum necessary to afford relief, is based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variance granted in this ordinance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

PART 2. This ordinance applies to the expansion and remodeling of an existing structure at 708 East 6th Street within the 25 and 100-year floodplain, subject to Site Plan Permit No. SP-04-0997C.

PART 3. A variance is granted from:

- (A) the restriction on construction in the 25 and 100-year floodplain prescribed by Section 25-7-92 (*Encroachment On Floodplain Prohibited*) of the City Code; and
- (B) the requirement to dedicate the 100-year floodplain easement prescribed by Section 25-7-152 (*Dedication of Easements and Rights-of-Way*).

PART 4. The variance granted in this ordinance is effective only upon the satisfaction of the following condition:

The applicant shall submit a complete Elevation Certificate certifying the elevation of the finished structure, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of

Occupancy for the proposed structure.

PART 5. If the project for which this variance is granted does not receive all necessary building permits on or before February 3, 2006, this variance expires.

PART 6. Approval of this variance does not constitute approval of zoning, subdivision, a site plan, a building permit, or any other development permit, and it does not constitute a commitment to any particular land use, intensity of land use, or utility services. Approval of this variance does not constitute a guarantee of flood insurance availability, rates, or requirements.

PART 7. This ordinance takes effect on _____, 2005.

PASSED AND APPROVED

_____, 2005

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk